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Remarks

In the official action mailed March 9, 2007, the examiner rejected claims 1-4, 9 and 11 under 35 U.S.C. § 103(a) over U.S. 2005/0000391 to Rydgren et al. Claims 6, 7, 10 and 12 are rejected under 35 U.S.C. § 103(a) over Rydgren et al. in view of U.S. 2005/0176951 to Berglund et al. Claim 8 is rejected under 35 U.S.C. § 103(a) over U.S. WO/03/04870 to Rydgren et al ( WO'070) in view of WO 03/048211 to Berglund et al. and further in view of U.S. Patent No. 5,395,930 to Bartz et al. The examiner also indicated that claim 5 is allowable.

In view of the rejections, applicants provide the following distinguishing remarks, which are believed to place the present case in condition for allowance. Favorable reconsideration of all of the pending claims is respectfully requested.

The Invention

The invention relates to certain types of water-soluble methyl ethyl hydroxyethyl cellulose ethers that reduce the formation of stable foam and improve stability when used in aqueous paint compositions. The cellulose ethers of the invention also have a reduced tendency flocculate organic and inorganic pigment and to increase the viscosity during storage, while at the same time maintaining the favourable properties of the alkyl cellulose ethers, such as a good wetting ability and a high thickening effect.

The cellulose ethers according to the invention have a flocculation temperature of 70-95°C, a DS substitution of methyl from 0.1-0.8, and a DS substitution of ethyl from 0.1-0.7. The MS-hydroxyethyl is suitably from 1.5-2.8, preferably from 1.7-2.5. The viscosity of the alkyl hydroxyethyl cellulose ethers according to the invention is normally between 10-10000 cP, preferably 100-7000 cP, measured in a 1% water solution of pH 7 according to Brookfield LV at 12 rpm at 20°C.

**I. The Rejection of Claims 1-4, 9 and 11 under 35 U.S.C. § 103(a) over Rydgren et al**

Initially, in a conversation with the examiner on July 6<sup>th</sup>, 2007, the examiner confirmed that Rydgren et al. is prior art against the present application under 35 U.S.C. § 102(e), and that § 102(e) provides the basis for the present rejection under § 103(a). See also the present action, at page 7, last paragraph, on to page 8. In this regard, the examiner is respectfully directed to 35 U.S.C. § 103(c)(1) which reads as follows:

*"(c) (1) Subject matter developed by another person, which qualifies as prior art only under one or more subsections (e), (f), and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person."*

(Emphasis ours.)

Applicants note that Rydgren et al. published on January 6, 2005, based on a PCT application that was filed on November 26, 2002. Both Rydgren et al. and the present application have a common assignee, i.e., Akzo Nobel nv.

**[\*\*Applicants representative found the chart in the MPEP at page 800-14 to be extremely helpful in addressing this rejection and respectfully suggest that it may also be helpful to the examiner\*\*]**

The undersigned is an attorney of record in this case and a representative of the assignee, Akzo Nobel nv. The undersigned hereby states that Rydgren et al. and the present application were, at the time the invention of the present application was made, owned by Akzo Nobel nv.

The above statement of common ownership is believed to be in compliance with MPEP 706.02(I)(2)II. Accordingly, Rydgren et al. is believed to be disqualified as prior art

pursuant to 35 U.S.C. § 103(c)(1); reconsideration and withdrawal of the subject rejection is therefore respectfully requested.

**II. The Rejection of Claims 6, 7, 10 and 12 under 35 U.S.C. § 103(a) over Rydgren et al. in view of Berglund et al.**

As discussed in detail above, the primary reference to Rydgren et al. is believed to be disqualified as prior art pursuant to 35 U.S.C. § 103(c)(1); accordingly, the present rejection is now believed to be moot. Reconsideration and withdrawal of the present rejection is respectfully requested.

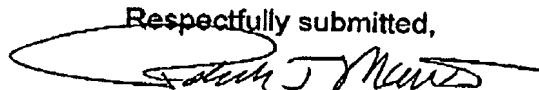
**III. The Rejection of Claim 8 under 35 U.S.C. § 103(a) over WO'070 in view of Bergland et al. and further in Bartz et al.**

Initially, WO'070 is the published PCT counterpart (parent) of Rydgren et al. Applicants respectfully submit that WO'070 is not prior art against the present application for the same reasons as mentioned above with respect to Rydgren et al. Accordingly, since the primary reference in this rejection is not prior art against the present application, applicants respectfully submit that the present rejection cannot stand; reconsideration and withdrawal thereof is respectfully requested.

Should the examiner decide to reject the present claims per a provisional obviousness-type-double patenting rejection, applicants would be more than willing to file the appropriate terminal disclaimer in due course (See MPEP 804 II. B. 1., along with the chart on MPEP page 800-14.)

In view of the foregoing, applicants respectfully submit that the present case is in condition for allowance, which action is respectfully solicited. Should the examiner have any questions regarding this response, she is urged to contact the undersigned at the number listed below.

Respectfully submitted,



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